Gua.P. 1/2006
BEFORE

THE HON'BLE JUSTICE SMT. A. HAZARIKA

This appeal has been preferred under Section 47(g) of the Guardians and Wards Act, 1890 (Act 1890 for short) against the order dated 13.12.05 passed by the District Judge, Jorhat in Civil Misc. Case No.99/03 arising out of Misc.(J) Case No. 180/97 refusing to remove the guardian as prayed for.

2. Heard Mr. B.D. Das, learned counsel for the appellant. Also heard Mr. C.K.S. Baruah, learned Senior counsel assisted by Mr. N. Rajkhowa, advocate for the respondent.

3. Mr. C.K.S. Baruah, learned Senior counsel has raised a preliminary objection about the maintainability of the appeal. Learned Senior counsel has drawn the attention of this Court to the relevant provision of law laid down in Section 47 of the Act 1890 which reads as follows:

47. Orders appealable.- An appeal shall lie to the High Court from an order made by a court.

(g) under section 39, removing a guardian;

4. From the perusal of the aforesaid provision of law I find that there is considerable force in the argument advanced by the learned Sr. counsel appearing for the respondent. Section 47 of Act 1890 confers a right of appeal against an order passed by the District court under Section 39 for removing a guardian. But it nowhere gives a right of appeal from an order refusing to remove a guardian inasmuch as, Section 48 clearly says:

Finality of other orders-Save as provided by the last foregoing section and by section 622 of the Code of Civil Procedure, 1882 (14 of 1882), an order made under this Act shall final, and shall not be liable to be contested by suit or otherwise.

5. From the above provision of law it is therefore, clear that no appeal lies from the order of the court below under section 47(g) of the Act 1890.

6. In view of the above position, this appeal is dismissed being not maintainable in law.